



**DELAWARE DIVISION OF FISH AND WILDLIFE
INVITATION TO BID**

CONTRACT NO. NAT-13-002_AGLEASE

Milford Neck Penuel and Coverdale Tract Agricultural Lease

January 31, 2013

**- Deadline to Respond -
February 21, 2013
2:00 PM DST**

ALL BIDDERS:

The enclosed packet contains an "INVITATION TO BID" for AGRICULTURAL LAND LEASE.

The invitation consists of the following documents:

INVITATION TO BID - CONTRACT NO. NAT-13-002_AGLEASE

- A. INVITATION TO BID
- B. GENERAL PROVISIONS
- C. AWARD AND EXECUTION OF LEASE
- D. DELAWARE DIVISION OF FISH AND WILDLIFE SPECIFICATION AND LEASE REQUIREMENTS
 - EXHIBIT 1 – AERIAL VIEW OF AGRICULTURAL FIELDS, PENUEL AND COVERDALE TRACT, MILFORD NECK ROAD
 - EXHIBIT 2 – CHART SHOWING APPROXIMATE ACREAGE OF AGRICULTURAL FIELDS
 - EXHIBIT 3 – AGRICULTURAL LAND LEASE
- E. VENDOR BID SECTION
 - 1 – VENDOR BID FORM
 - 2 – NO BID REPLY FORM
 - 3 – NON-COLLUSION STATEMENT AND ACCEPTANCE

In order for your bid to be considered, the bid quotation reply section shall be executed completely and correctly and returned in a sealed envelope clearly displaying the contract number **by February 21, 2013, 2:00 PM DST.**

Bids shall be submitted to:

Delaware Division of Fish and Wildlife
89 Kings Highway
Dover, DE 19901

Please review and follow the information and instructions contained in the general and special provisions section of the invitation. Should you need additional information, please call (302) 284-1077

SECTION A

INVITATION TO BID

Sealed bids for **NAT-13-002 AGLLEASE** shall be received by the Delaware Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 until **February 21, 2013, 2:00 PM DST** at which time bids will be opened, read and recorded.

The Delaware Division of Fish and Wildlife has reviewed the parcel's current and intended future use and specifically determined that it is not "surplus real property" as defined by 29 *Del. C.* § 9402(d) and, therefore, that the Delaware Division of Fish and Wildlife has determined that the parcel is outside the jurisdiction of the Commission on State Surplus Property.

NOTE TO VENDORS: The Non-Collusion Statement must be notarized and signed or the bid will automatically be rejected.

If you do not intend to submit a bid, please return the "No Bid Reply Form."

NOTE: Only the Bidder's name will be read at the bid opening.

For further bidding information, please contact:

Wayne C. Lehman, (302) 284-1077, wayne.lehman@state.de.us or
Karen Kennedy, (302) 739-9912, karen.kennedy@state.de.us

SECTION B – GENERAL PROVISIONS

1. **BID FORMS:**

The Invitation to Bid shall contain pre-printed forms for use by the vendor in submitting his bid. The forms shall contain basic information such as description of the land and shall have blank spaces for use by the vendor for entering information such as bid price and surety amount.

2. **INTERPRETATION OF ESTIMATES:**

The attention of bidders is called to the fact that, unless stated otherwise, the acreage referenced in this and all associated documents are estimates.

3. **DELIVERY OF BIDS:**

Bids shall be delivered in sealed envelopes and shall bear on the outside the name and address of the bidder as well as the designation of the Lease. Bids forwarded by U.S. Mail shall be sent first class to the address listed below. Bids forwarded by delivery service other than the U.S. Mail or hand delivered must be delivered to the address listed below. All bids must clearly display the bid number on the envelope.

State of Delaware
Delaware Division of Fish and Wildlife
Wayne Lehman
Fish and Wildlife Regional Manager
89 Kings Highway
Dover, DE 19901

All bids will be accepted at the time and place set in the advertisement. Bidder bears the risk of delays in delivery. Bids received after the time set for public opening will be returned unopened.

4. **WITHDRAWAL OF BIDS:**

A bidder may withdraw his bid unopened after it has been deposited, if such a request is made prior to the time set for the opening of the bid.

5. **PUBLIC OPENING OF BIDS:**

The bids shall be publicly opened at the time and place specified by Delaware Division of Fish and Wildlife. Bidders or their authorized representatives are invited to be present. At the time of opening, only the names of the bidders will be announced.

6. **LAWS TO BE OBSERVED:**

The contractor is presumed to know and shall strictly comply with all National, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work. The contractor shall indemnify and save harmless the State of Delaware, Delaware Division of Fish and Wildlife

and all officers, agents and employees thereof against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by himself or by his employees.

7. **PERMITS AND LICENSES:**

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the contractor at his own expense.

8. **DOCUMENTS:**

Prospective bidders should obtain a Bid Packet for each separate agricultural lease to be bid. The Bid Packet contains instructions, a maps (Exhibit 1), a chart showing approximate acres of agricultural fields (Exhibit 2), an agricultural land lease (Exhibit 3) and a bid offer form.

9. **EXAMINATION:**

Each bidder should carefully examine the maps (Exhibit 1), chart (exhibit 2), and agricultural land lease (Exhibit 3). Bidders are encouraged to visit the land subject to lease to fully view existing conditions that may affect the performance of the bidder under the lease. The successful bidder, after executing a lease, shall in no way be relieved of any obligation under the lease due to a failure to fully examine the lease or to visit the land subject to the lease.

10. **FORM OF BID:**

Bids shall be submitted on the Bid Offer Form, enclosed herein. Submit bid amounts on a yearly and per acre basis. Sign and print name as noted. A bidder shall make no stipulations or other qualifications on the bid form. Any such notations may subject a bid to rejection.

11. **SIGNING BIDS:**

If the bidder is an individual, the bid form shall be signed by the individual, under his/her name. If the bidder is a partnership, the bid form shall be signed by an authorized partner, under the name of the partnership. If the bidder is a corporation, the bid form shall be signed by an authorized executive officer of the corporation under its registered name and the corporate seal shall be affixed.

12. **BID SECURITY:**

Each bid must be accompanied by a certified check made out to Delaware Division of Fish and Wildlife for twenty five percent (25%) of the bid annual lease fee, serving as bid security. For a successful bid, the bid security shall be applied to the first year annual lease fee upon execution of the agricultural lease. The remaining seventy five percent (75%) shall be due on or before October 31 of the first year of the lease term. For an unsuccessful bid, the bid security shall be returned to the bidder within seven (7) working days.

13. **BID SUBMITTAL:**

The bidder shall assume full responsibility for timely delivery of all submitted bids. Oral, email, fax or telephone bids are not allowed. Each bid shall be submitted in a sealed envelope marked **Bid Enclosed**, labeled with the bid number and Agricultural Lease # for the land, the bidder's name and the bid opening

date and time. Bids submitted by mail shall be enclosed in an outer envelope marked with Bid Enclosed and sent to:

State of Delaware
Delaware Division of Fish and Wildlife
Wayne Lehman
Fish and Wildlife Regional Manager
89 Kings Highway
Dover, DE 19901

14. **ACCEPTANCE OF BID:**

The Delaware Division of Fish and Wildlife reserves the right to waive technicalities, to reject any and all bids, to advertise for new bids, to proceed to deal with the land otherwise, or to abandon the execution of an agricultural lease, if the best interest of the State will be promoted thereby. The Delaware Division of Fish and Wildlife shall award an agricultural land lease to the highest qualified bidder. The successful bidder shall be notified within thirty (30) working days.

15. **CONTACT INFORMATION:**

Wayne C. Lehman, (302) 284-1077, wayne.lehman@state.de.us or
Karen Kennedy, (302) 739-9912, karen.kennedy@state.de.us

16. **EXCEPTIONS:**

Bidders may elect to take minor exception to the terms and conditions of this ITB. Delaware Division of Fish and Wildlife shall evaluate each exception according to the intent of the terms and conditions contained herein, but Delaware Division of Fish and Wildlife must reject exceptions that do not conform to State law and/or create inequality in the treatment of bidders. Exceptions shall be considered only if they are submitted with the bid or before the date and time of the bid opening.

17. **BID/LEASE EXECUTION:**

Both the non-collusion statement that is enclosed with this Invitation to Bid and the Lease form delivered to the successful bidder for signature **shall** be executed by a representative who has the legal capacity to enter the organization into a formal Lease with the State of Delaware, Delaware Division of Fish and Wildlife. The awarded vendor(s) shall submit their **W-9** with the executed Lease form.

18. **DISQUALIFICATION OF BIDDERS:**

Any one or more of the following causes may be considered as sufficient for the disqualification of a bidder and the rejection of his bid:

- a. More than one bid for the same Lease from an individual, firm, or corporation under the same or different names.
- b. Evidence of collusion among bidders.
- c. Unsatisfactory performance record as evidenced by past experience.

- d. Any unauthorized additions, interlineations, conditional or alternate bids or irregularities of any kind which may tend to make the bid incomplete, indefinite, or ambiguous as to its meaning.

SECTION C – AWARD AND EXECUTION OF LEASE

1. CONSIDERATION OF BIDS:

- a. After the bids have been opened, the bids will be tabulated and the results will be made available to the public. Tabulations of the bids will be based on the correct summation of items at the unit price bid.
- b. The right is reserved to waive technicalities, to reject any or all bids, or any portion thereof, to advertise for new bids, to proceed to do the work otherwise, or to abandon the work, if in the judgment of the Delaware Division of Fish and Wildlife or its agent, the best interest of the State will be promoted thereby.

2. AWARD OF LEASE:

The Delaware Division of Fish and Wildlife shall award an agricultural land lease to the highest qualified bidder. The successful bidder shall be notified within thirty (30) working days.

3. EXECUTION OF LEASE:

- a. The bidder to whom the award is made shall execute a formal Lease and bond within twenty days after date of official notice of the award of the Lease.
- b. If the successful bidder fails to execute the required Lease and bond, as aforesaid, within twenty days after the date of official notice of the award of the Lease, his bid guaranty shall immediately become forfeited as liquidated damages. Award will then be made to the next lowest qualified bidder of the work or re-advertised, as Delaware Division of Fish and Wildlife may decide.

4. THE LEASE(S):

The Lease(s) with the successful bidder(s) will be executed with the Delaware Division of Fish and Wildlife.

SECTION D

**SPECIFICATIONS AND LEASE REQUIREMENTS
FOR LEASING AGRICULTURAL LANDS WITH THE**

Delaware Division of Fish and Wildlife

The State of Delaware will lease agricultural lands known as land in and around Milford Neck Wildlife Area, Penuel and Coverdale Tract, subject to the following:

TERM OF LEASE:

This Lease will be for a period of three (3) years beginning March 15, 2013 and ending December 31, 2015.

ACREAGE:

Fields that are designated and offered for lease by Delaware Division of Fish and Wildlife are approximately 194 acres. Delaware Division of Fish and Wildlife does not guarantee the exact acres of the land for lease.

LAND USAGE:

The land covered under this lease is to be used for crop purposes only and for no other purposes. Lessee covenants and agrees that it will farm in accordance with generally accepted farming practices and procedures. Failure to do so will be cause for immediate termination of the lease.

ASSIGNMENT OF LEASE:

Lessee may not assign his interest in this lease without the prior written consent of the Lessor.

SECURITY:

Lessee covenants and agrees that he will in no way interfere with the security of the Institution or in the DIVISION's ability to carry out its mission.

BINDING:

This agreement is binding upon the parties hereto, their heirs, successors, administrators and assignees.

CONDITIONS:

The Division of Fish and Wildlife will lease agricultural land known as the Milford Neck Wildlife Area (Penuel and Coverdale Tracts) subject to the following conditions:

- 1) The Division reserves the right to reject any or all bids, or to cancel this lease on or before February 21 of each year by written notice, given at least 60 days prior to February 21 for non-performance of the contract. This lease shall not be subject to subleasing on the part of the Lessee.

- 2) Lessee will be required to pay twenty-five percent (25%) of the annual rental when the contract is awarded. In subsequent years of the contract, the twenty-five percent (25%) payment is due on or before March 15. The remaining balance of the annual rental, seventy-five percent (75%) shall be due on or before October 31 of each year of the lease. Failure to make timely payments shall be a condition to cancel the lease at any time. In

addition, Lessee must agree to grant a security interest (lien) in farm crops, not limited to soybeans, sorghum, or corn, standing, grown, in storage or in transit, which are grown on described rental property, to insure performance by the Lessee under all agreements with the Lessor. The Lessee must provide the Division with a list of grain dealers that will be receiving crops grown on Division lands to insure execution of security interest.

3) Term lease: Three (3) crop season years, beginning March 31, 2013 and automatically terminating without written notice by the Division on December 31, 2015. The Division reserves the right to extend this lease for additional 3 crop year periods.

4) Fields with the approximate acreage that are offered for lease are outlined on the attached map and table. The Division does not guarantee the exact acres of land for rent.

5) Corn or soybeans will be grown at the discretion of the farmer unless otherwise directed in writing by the Division. In every field, four productive rows of corn or ten feet of soybeans shall be left unharvested on either side of each field except the sides along paved or dirt roads. In addition, twenty productive rows of corn or fifty feet of soybeans shall be left in the center (running lengthwise) of fields 1, 6, and 13. The location of such standing crops will be agreed upon before harvest by the Lessor and Lessee. Failure to leave the required standing crop shall result in cancellation of this contract. Crop left in the field after combining by mechanical picker will not be removed until March 15 of each year. Each fall after harvest, a cover crop of small grains must be planted on all portions of fields where unharvested crops are not required. Lessee is cautioned that winter grains may be damaged by wintering waterfowl.

6) The Division reserves the right to prohibit the use of certain agricultural pesticides on their lands. The use of carbofuran (Furadan) liquid or granular is prohibited on Division lands. The Division will inform Lessees of other restricted compounds. Lessee may be requested to submit a listing of pesticides to be used on Division lands. Violation of Federal, State, or Division pesticide regulations shall be a condition to cancel the lease.

7) Lessee will be required to apply lime at sufficient rates to maintain the soil pH between 5.8 and 6.5, to be monitored annually by the Lessee through soil sample analysis. Fertilizer will be applied at an equal rate on both crops to be harvested by the Lessee and those left unharvested for the Division.

8) The Lessee shall not plow, disk, or otherwise till any areas until March 15 of each year in order to leave food and cover for wildlife during the winter, except as directed by the Division.

9) No tillage, mowing, or herbicide applications will be permitted in fields or portions of fields taken out of production without advance written consent of the Division. These edges are marked by Division of Fish and Wildlife signs. The acreage of these areas has been subtracted from the total rental acreage calculation. Thus, Division staff is responsible for noxious weed control and other maintenance of these areas.

10) The Lessee shall be responsible for the control of noxious weeds growing on leased lands, as declared by the Delaware Department of Agriculture. Failure of Lessee to comply with Department of Agriculture noxious weed control measures shall be a condition to cancel the lease.

11) The Division reserves the right to create new hedgerows, ponds, buffer strips, or divert land for other uses. Any lands diverted for these will not affect the contract bid price unless such diversion exceeds three percent of

the tillable acreage. The Division will deduct a proportional amount from the annual rent for diversions exceeding three percent.

12) All hunting and trapping rights and privileges and all land use except agricultural tillable rights are reserved by the Division. The Lessee is advised to harvest all crops as early as possible each year to prevent damage due to hunting as these lands will be open to public hunting. The Division will not be held responsible for any damage to the Lessee's crops or machinery.

13) The successful bidder agrees to give preference in employment to bona fide legal citizens in this state who have established citizenship by residence of at least ninety (90) days in the state.

HOLD HARMLESS:

The successful bidder agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the successful bidder, its employees, and invitees on or about the premises and which arise out of the successful bidder's performance, or failure to perform as specified in the Agreement.

TERMINATION FOR CONVENIENCE:

Leases shall remain in effect for the time period and quantity specified unless the Lease is terminated by the State. The State may terminate the Lease at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of termination.

TERMINATION FOR CAUSE:

If, for any reasons or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations under this Lease, or if the Contractor violates any of the covenants, agreements, or stipulations of this Lease, the State shall thereupon have the right to terminate this Lease by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 5 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Lease shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

Exhibit 1

Exhibit 1. Aerial view of Milford Neck Wildlife Area Penuel and Coverdale Tract showing agricultural fields at Milford Neck Road near Milford, Delaware.

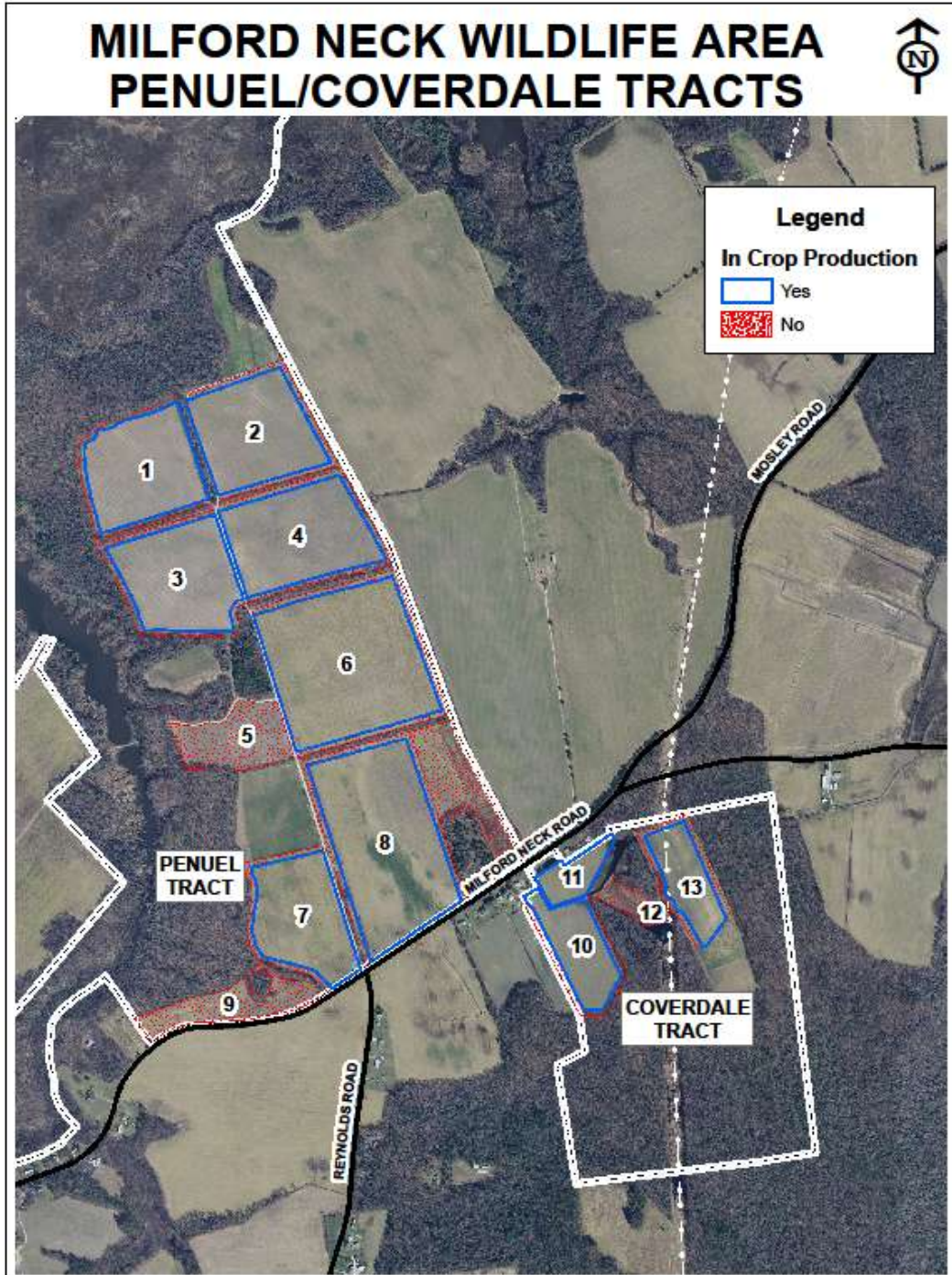


Exhibit 2

Exhibit 3. Agricultural Acres for Milford Neck Wildlife Area Penuel and Coverdale Tract.

| Agricultural Field | Acres |
|--------------------|-------|
| 1 | 19 |
| 2 | 20 |
| 3 | 20 |
| 4 | 22 |
| 5 | OUT |
| 6 | 38 |
| 7 | 18 |
| 8 | 35 |
| 9 | OUT |
| 10 | 10 |
| 11 | 4 |
| 12 | OUT |
| 13 | 8 |
| | |
| Totals | 194 |

Exhibit 3

LEASE # NAT-13-002_AGLEASE

AGRICULTURAL LANDS

AT

Milford Neck Wildlife Area, Penuel and Coverdale Tract

THIS LEASE, made and entered into this XX day of [insert month and year], by and between the State of Delaware, Delaware Division of Fish and Wildlife Party of the First Part, hereinafter referred to as "DIVISION,"

AND

(Tenant), of (Tenant Address), Party of the Second Part, hereinafter referred to as "TENANT."

WITNESSETH, for and in consideration of the covenants and promises hereinafter contained and the payment of rentals as herein set forth, DIVISION leases and rents TENANT and TENANT leases and rents from DIVISION, all that certain cleared tracts of land situate in _____ to the _____ Tax Records and more specifically located on the attached map, hereinafter referred to as "leased land".

1. **PARTIES.** The name and address of the Parties are:

DIVISION: Delaware Division of Fish and Wildlife
89 Kings Highway
Dover, DE 19901

TENANT: (Tenant Address & Phone No.)

2. **TERM OF LEASE.** The term of this Lease shall be for three (3) years beginning on March 15, 2013 and terminating on December 31, 2015, without notice of such termination.
3. **RENTAL FEE.** TENANT shall pay DIVISION an annual rental fee of (amount) Dollars (\$). The annual rental fee is based on (amount) Dollars (\$) per acre charge for approximately 194 acres. DIVISION does not guarantee the exact total acreage of leased land. Twenty five percent (25%) of rental fees shall be paid to DIVISION on or before March 15 and seventy five percent (75%) on or before October 31 for that lease year.
4. **SECURITY INTEREST.** TENANT hereby grants to DIVISION a security interest in the agricultural commodities grown by TENANT on the leased land during the term of this Lease, whether such crops are standing, grown, in storage or in transit, and in any proceeds from the sale, exchange, transfer or other disposition of the collateral or proceeds, to ensure the performance by TENANT under all agreements with DIVISION, as well as payment of any and all sums now, heretofore and hereafter owing to DIVISION by TENANT as a result of TENANT entering into this Lease with DIVISION.

5. **USE OF LEASED LAND.** The leased land may be used for producing agricultural commodities, limited to corn and/or soybeans. TENANT agrees to follow good farm management practices and to farm the land in a good and reasonable manner to avoid degradation of the environment and further agrees to the following:
- a) TENANT shall enter into a Conservation Plan for the leased land with the National Resources Conservation Service. The Plan shall contain instructions for management of soil fertility, nutrients, erosion control, agricultural chemicals, integrated pest management, and wildlife concerns. TENANT shall enter into a Nutrient Management Plan for the leased land with the Delaware Department of Agriculture. The plan shall follow all appropriate state regulations. Both plans shall be submitted to the DIVISION prior to the end of the first year of the lease term.
 - b) TENANT shall use all reasonable precautions to avoid the establishment of any noxious weeds, including Johnson grass, Canada thistle, bur cucumber, giant ragweed, and any additional noxious weeds as specified under Delaware State Law. If TENANT fails to control said vegetation, then DIVISION may terminate this Lease and may contract with an independent vendor to apply appropriate control measures to eradicate said noxious weeds and the cost of such measures shall be the responsibility of the TENANT.
 - c) TENANT shall submit to DIVISION, upon request, a list of all agricultural pesticides, herbicides and other chemical sprays to be used on the leased land. All such products shall meet Federal and State standards and, if required, be applied by certified applicators in the appropriate manner and rate as per label instructions. Violation of Federal, State pesticide, herbicide or other chemical spray laws, rules and regulations shall be a condition to cancel the Lease. DIVISION reserves the right to prohibit the use of certain agricultural chemicals on the leased land.
 - d) Dumping, depositing, abandoning, discharging, releasing, or storing of any gaseous, liquid or solid hazardous wastes, substances, materials, or debris of whatever nature on, in, over, or under the ground or into surface or ground water is prohibited, except as permitted by law.
 - e) The DIVISION reserves the right to reject any or all bids, or to cancel this lease on or before February 21 of each year by written notice, given at least 60 days prior to February 21 for non-performance of the contract. This lease shall not be subject to subleasing on the part of the TENANT.
 - f) TENANT will be required to pay twenty-five percent (25%) of the annual rental when the contract is awarded. In subsequent years of the contract, the twenty-five percent (25%) payment is due on or before March 15. The remaining balance of the annual rental, seventy-five percent (75%) shall be due on or before October 31 of each year of the lease. Failure to make timely payments shall be a condition to cancel the lease at any time. In addition, TENANT must agree to grant a security interest (lien) in farm crops, not limited to soybeans or corn, standing, grown, in storage or in transit, which are grown on described rental property, to insure performance by the TENANT under all agreements with the DIVISION. The TENANT must provide the DIVISION with a list of grain dealers that will be receiving crops grown on DIVISION lands to insure execution of security interest.

- g) Term lease: Three (3) crop season years, beginning March 31, 2013 and automatically terminating without written notice by the DIVISION on December 31, 2015. The DIVISION reserves the right to extend this lease for additional 3 crop year periods.
- h) Fields with the approximate acreage that are offered for lease are outlined on the attached map and table. The DIVISION does not guarantee the exact acres of land for rent.
- i) Corn or soybeans will be grown at the discretion of the TENANT unless otherwise directed in writing by the DIVISION. In every field, four productive rows of corn or ten feet of soybeans shall be left unharvested on either side of each field except the sides along paved or dirt roads. In addition, twenty productive rows of corn or fifty feet of soybeans shall be left in the center (running lengthwise) of fields 1, 6, and 13. The location of such standing crops will be agreed upon before harvest by the DIVISION and TENANT. Failure to leave the required standing crop shall result in cancellation of this contract. Crop left in the field after combining by mechanical picker will not be removed until March 15 of each year. Each fall after harvest, a cover crop of small grains must be planted on all portions of fields where unharvested crops are not required. TENANT is cautioned that winter grains may be damaged by wintering waterfowl.
 - j) The DIVISION reserves the right to prohibit the use of certain agricultural pesticides on their lands. The use of carbofuran (Furadan) liquid or granular is prohibited on DIVISION lands. The DIVISION will inform TENANT of other restricted compounds. TENANT may be requested to submit a listing of pesticides to be used on DIVISION lands. Violation of Federal, State, or DIVISION pesticide regulations shall be a condition to cancel the lease.
- j) TENANT will be required to apply lime at sufficient rates to maintain the soil pH between 5.8 and 6.5, to be monitored annually by the TENANT through soil sample analysis. Fertilizer will be applied at an equal rate on both crops to be harvested by the TENANT and those left unharvested for the DIVISION.
- k) The TENANT shall not plow, disk, or otherwise till any areas until March 15 of each year in order to leave food and cover for wildlife during the winter, except as directed by the DIVISION.
- l) No tillage, mowing, or herbicide applications will be permitted in fields or portions of fields taken out of production without advance written consent of the DIVISION. These areas are marked by Division of Fish and Wildlife signs. The acreage of these areas has been subtracted from the total rental acreage calculation. Thus, DIVISION staff is responsible for noxious weed control and other maintenance of these areas.
- m) The TENANT shall be responsible for the control of noxious weeds growing on leased lands, as declared by the Delaware Department of Agriculture. Failure of TENANT to comply with Department of Agriculture noxious weed control measures shall be a condition to cancel the lease.
- n) The DIVISION reserves the right to create new hedgerows, ponds, buffer strips, or divert land for other uses. Any lands diverted for these will not affect the contract bid price unless such

diversion exceeds three percent of the tillable acreage. The DIVISION will deduct a proportional amount from the annual rent for diversions exceeding three percent.

- o) All hunting and trapping rights and privileges and all land use except agricultural tillable rights are reserved by the DIVISION. The TENANT is advised to harvest all crops as early as possible each year to prevent damage due to hunting as these lands will be open to public hunting. The DIVISION will not be held responsible for any damage to the TENANT'S crops or machinery.
- p) TENANT agrees to give preference in employment to bona fide legal citizens in this state who have established citizenship by residence of at least ninety (90) days in the state.

6) RESERVED RIGHTS. DIVISION reserves the following rights related to the leased land:

- a) DIVISION reserves the right to grant easements and rights of way across or upon the leased land. Annual rental fee shall be reduced to reflect any leased land acreage taken out of production.
- b) DIVISION reserves the right to create pathways, buffer strips, and hedgerows or to divert land for other DIVISION uses. Annual rental fee shall be reduced to reflect any leased land acreage taken out of production.
- c) DIVISION reserves the right of ingress and egress onto and over the leased land for inspection purposes, for enforcement of all laws, rules and regulations of DIVISION and for any other lawful purpose.

7) HOLD HARMLESS. TENANT agrees to exercise the rights herein granted at its own risk fees, arising from or in any way connected with injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the leased land, regardless of cause, unless due to the gross negligence or willful misconduct of any of the Indemnified Parties.

8) DAMAGES TO PROPERTY. TENANT agrees to be solely responsible for any and all injury, loss or damage to TENANT'S person, crops, equipment, and property or to equipment and property of others which may be placed on the leased land at TENANT'S request, and TENANT waives and releases any and all claims or rights against DIVISION with respect thereto.

9) INSURANCE. TENANT shall be insured against liability resulting from any agricultural practice or presence upon the leased land.

10) ASSIGNMENT, INSOLVENCY OR BANKRUPTCY. Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of TENANT or (b) a general assignment by TENANT for the benefit of creditors or (c) any action taken or suffered by TENANT under any insolvency or bankruptcy act shall constitute a breach of this Lease by TENANT and cause this Lease to terminate immediately.

11) TERMINATION OF LEASE. TENANT agrees that if it fails to observe or perform any of the conditions or covenants on its part to be observed or performed, or if TENANT knowingly permits

any unlawful acts to be carried out upon the leased land, then DIVISION shall have the right to terminate the Lease and to re-enter and repossess the leased land in the manner provided for by the laws of the State of Delaware. If DIVISION terminates this Lease while TENANT has crops growing in the fields, the DIVISION agrees not to take possession of the leased land until after TENANT has harvested the crop during the normal harvest period or, at DIVISION'S option, DIVISION will reimburse TENANT at the fair market value for crops destroyed. TENANT may terminate this Lease by giving DIVISION ninety (90) days notice in writing. TENANT shall yield peaceable possession of the leased land at the termination of the Lease.

- 12) **NOTICES.** Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid and addressed as per Paragraph 1. Upon written notice from a Party, or a successor in interest, to the other Party hereto, any such notice, demand or other written communication shall be given to that Party or successor at the address indicated in such notice.
- 13) **WAIVER OF BREACH.** The waiver or acceptance by DIVISION of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any continuing or subsequent breach of the same or any other term, covenant or condition herein contained. All waivers or acceptances must be in writing. The subsequent acceptance of rent hereunder by DIVISION shall not be deemed to be a waiver or acceptance of any preceding breach by TENANT of any term, covenant or condition of this Lease, other than the failure of TENANT to pay the particular rental fee so accepted, regardless of DIVISION'S knowledge of such preceding breach at the time of acceptance of such rental fee.
- 14) **LEGAL COSTS AND EXPENSES.** TENANT shall pay and discharge all costs, attorneys' fees and expenses arising from enforcing any covenant or forfeiture hereof.
- 15) **RULES AND REGULATIONS.** The rules and regulations contained in this Lease, as well as such reasonable rules and regulations as may be hereafter adopted by DIVISION for the safety, care and protection of its leased lands and the preservation of good order thereon, are hereby expressly made a part hereof, and TENANT agrees to adhere to all such rules and regulations, after notice of same.
- 16) **REMEDIES.** It is understood and agreed that the remedies herein given to DIVISION shall be cumulative, and the exercise of any one remedy by DIVISION shall not be to the exclusion of any other remedy.
- 17) **BINDING AGREEMENT.** The covenants and conditions herein contained shall apply to and bind the heirs, executors, administrators, successors, and assigns of all of the Parties hereto; and all of the Parties hereto shall be jointly and severally liable hereunder. This Lease shall not be interpreted as a waiver of the sovereign immunity of DIVISION.
- 18) **TIME.** Time is of the essence of this Lease.
- 19) **LAW.** This Lease shall be construed and interpreted in accordance with the laws of the State of Delaware.
- 20) **ENTIRE CONTRACT.** This instrument contains the entire agreement of the Parties and supersedes, cancels, and revokes any and all other agreements between the Parties relating to the

subject matter of this Lease. There are no representations or warranties, either oral or written, except those contained in this Lease. This Lease may be modified only by an amendment in writing signed by both Parties.

- 21) SEVERABILITY.** If any portion of this Lease shall be held invalid or unenforceable, the validity of the remaining portion shall be unaffected and this Lease shall remain in full force and effect as if it had been executed with the invalid portion omitted.

IN WITNESS WHEREOF, this Lease has been executed by the Parties hereto as of the day and year above written.

STATE OF DELAWARE
Delaware Division of Fish and Wildlife

Witness

By: _____
David E. Saveikis
Director
Delaware Division of Fish and Wildlife

Witness

By: _____
Name
Title
Agency

Witness

By: _____
Tenant Signature

STATE OF DELAWARE)
) SS.
COUNTY OF)

BE IT REMEMBERED, That on this ____ day of _____, 2013, personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, _____, Party of the First Part, known personally to be such, and acknowledged this Agreement to be his act and deed and the act and deed of said DIVISION.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

NOTARY PUBLIC

My commission expires on _____.

STATE OF)
) SS.
COUNTY OF)

BE IT REMEMBERED, That on this ____ day of _____, 2013, personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, (TENANT), known personally to be such, and acknowledged the foregoing instrument to be his/her act and deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

NOTARY PUBLIC

My commission expires on _____.

SECTION E

VENDOR BID SECTION

To be considered for this Lease, complete the following forms fully and completely and return to Delaware Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 by **February 21, 2013, 2:00 PM DST** local time, at which time bids will be opened.

THE FOLLOWING ARE REQUIRED IN ORDER FOR YOUR BID TO BE CONSIDERED:

- 1. Non-Collusion Statement**
- 2. Vendor Bid Offer Form**

PUBLIC BID OPENINGS

NOTE: ONLY THE BIDDER'S NAME WILL BE READ AT THE BID OPENING

Delaware Division of Fish and Wildlife

**AGRICULTURAL LAND LEASE
BID OFFER FORM**

BID DUE: February 21, 2013, 2:00 PM DST local time

TO: State of Delaware
Delaware Division of Fish and Wildlife
89 Kings Highway
Dover, DE 19901

AGRICULTURAL LAND LEASE BID FOR:

Milford Neck Wildlife Area Penuel and Coverdale Tract, ACRES – 194

The undersigned, representing that he/she received a Bid Packet, read the Instructions to Bidders, reviewed the map of lands subject to lease (Exhibit 1 & 2), reviewed the agricultural lease (Exhibit 4) and had the opportunity to visit the land subject to the lease, hereby makes the following bid offer to lease the above-referenced agricultural lands for a term of three (3) years beginning March 15, 2013 through December 31, 2015.

\$ _____ (per year of agricultural lease)

\$ _____ (per acre)

This bid offer is submitted with a certified check made out to Delaware Division of Fish and Wildlife as a Bid Security of twenty-five percent (25%) of the bid annual lease fee.

Bid Security = \$ _____. For a successful bid, the Bid Security shall be applied to the first year annual lease fee upon execution of the agricultural lease. The remaining seventy five percent (75%) shall be due on or before October 31, 2013 of the first year of the lease term and failure of such payment in full will result in forfeiture of the Bid Security and cancellation of the awarded agricultural lease.

This bid offer is submitted with the knowledge that Delaware Division of Fish and Wildlife reserves the right to waive technicalities, to reject any and all bids, to advertise for new bids, to proceed to deal with the land otherwise, or to abandon the execution of an agricultural lease, if the best interest of the State will be promoted thereby. Delaware Division of Fish and Wildlife shall award an agricultural land lease to the highest qualified bidder. The successful bidder shall be notified within seven (7) working days.

PRINT NAME OF BIDDER: _____

SIGNATURE OF BIDDER: _____

ADDRESS: _____

TELEPHONE: (____) _____ DATE SUBMITTED: _____

Bidder is: an individual; partnership; Corporation

If a partnership, bid offer shall be signed by an authorized partner under the name of the partnership. If a corporation, bid offer shall be signed by an authorized executive officer of the corporation under its registered name and the corporate seal affixed.

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STATE OF DELAWARE
Delaware Division of Fish and Wildlife
89 Kings Highway
Dover, DE 19901

NO BID REPLY FORM

BID # NAT-13-002_AGLEASE

BID TITLE: Milford Neck Wildlife Area Penuel and Coverdale Tract Agricultural Lease

To assist us in obtaining feedback about our Invitations to Bid, we ask that each firm that does not wish to bid, state their reason(s) below and return to the above address.

We must offer a "No Bid" at this time because:

- _____ 1. We do not wish to participate in the bid process.
- _____ 2. We do not wish to bid under the terms and conditions of the Request for Bid document. Our objections are:

- _____ 3. We do not feel we can be competitive.
- _____ 4. We cannot submit a Bid because of the marketing or franchising policies of the manufacturing company.
- _____ 5. We do not wish to sell to the State. Our objections are: _____

- _____ 6. We do not sell the items/services on which Bids are requested.
- _____ 7. Other: _____

FIRM NAME

SIGNATURE

CONTRACT NO: NAT-13-002_AGLEASE
TITLE: Milford Neck Wildlife Area Penuel and Coverdale Tract Agricultural Lease
OPENING DATE: February 21, 2013

NON-COLLUSION STATEMENT

This is to certify that the undersigned bidder has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this bid submitted this date to the State of Delaware.

It is agreed by the undersigned bidder that the signed delivery of this bid represents the bidder's acceptance of the terms and conditions of this Invitation to Bid including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal lease with the State of Delaware.

COMPANY NAME _____ (Check one)

| | |
|--------------------------|-------------|
| <input type="checkbox"/> | Corporation |
| <input type="checkbox"/> | Partnership |
| <input type="checkbox"/> | Individual |

NAME OF AUTHORIZED REPRESENTATIVE _____
(Please type or print)

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ STATE OF DELAWARE LICENSE NUMBER _____

| | | | | | | | | | |
|--------------------------|--|-----|----|---|-----|----|--|-----|----|
| COMPANY CLASSIFICATIONS: | <u>Women Business Enterprise (WBE)</u> | Yes | No | <u>Minority Business Enterprise (MBE)</u> | Yes | No | <u>Disadvantaged Business Enterprise (DBE)</u> | Yes | No |
| (Please circle) | | | | | | | | | |

PURCHASE ORDERS SHOULD BE SENT TO:
(COMPANY NAME) _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

THIS PAGE MUST BE SIGNED, NOTARIZED AND RETURNED FOR YOUR BID TO BE CONSIDERED

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20 _____

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____